**BEFORE THE**
**FEDERAL COMMUNICATIONS COMMISSION**
**WASHINGTON, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Revision of the Commission's Rules | ) | CC Docket No. 94-102 |
| To Ensure Compatibility with Enhanced 911 | ) | |
| Emergency Calling Systems | ) | |
| | ) | |
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**ACS WIRELESS' SUPPLEMENT TO ITS PETITION FOR LIMITED WAIVER AND FORBEARANCE**


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Dated: January 26, 2005

## I. SUMMARY

On January 14, 2005, ACS Wireless, Inc. (ACSW) filed an Update[1] to its November 14, 2003 Petition for Limited Waiver and Forbearance[2] to provide current information on the status of its CDMA network upgrade. ACSW reported that it had made substantial progress in completing Phases I and II of its CDMA network construction, but that it had to defer construction on certain sites in Phase III to a new Phase IV, with an expected completion date of December 31, 2006. Because of this delay in its construction program, ACSW needs additional time to meet the FCC's final deadlines. ACSW will ensure that 90% of all new handsets activated in Anchorage and Fairbanks will be location-capable by May 30, 2005. However, it requests until December 31, 2005 to have 90% of all new digital handsets activated statewide be location-capable. Also, it requests until December 31, 2007 to ensure 95% penetration of location-capable handsets among its subscribers.

ACSW also reported that only the Anchorage PSAP has made a request for E911 service.[3] No other PSAP has the equipment and/or software necessary to receive E911 Phase II location data.[4] ACSW does not foresee any PSAP in a rural area being ready to receive E911 service for some time. Consequently, ACSW will not be able to begin collecting location data to analyze accuracy levels in areas outside Anchorage for well over one year, and, more likely, several years. For these reasons, ACSW asks that the FCC forbear from enforcing its location accuracy requirement until December 31, 2008, so that it may have a longer period to collect and test location data for accuracy.

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[1] *See* Update to ACS Wireless Petition for Limited Waiver and Forbearance *In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102 (Jan. 14, 2005) (Update).

[2] *See* ACS Wireless Petition for Limited Waiver and Forbearance, *In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102 (Nov. 14, 2003) (2003 Petition).

[3] *See* Update at 4.

[4] *See id.*

## II. WAIVER REQUEST FOR HANDSET DEPLOYMENT SCHEDULE.

### 1. Background.

ACSW is a regional Tier III carrier that provides CMRS and PCS services within the state of Alaska. On November 30, 2001, ACSW filed a Petition for Limited Waiver of the E911 Phase II Location Technology Implementation Rules.[5] In this Petition, ACSW sought a limited waiver from the Commission's Phase II compliance schedule and proposed an alternative compliance plan that it believed was more achievable at the time. On November 14, 2003, following the Commission's July 26, 2002 *Non-Nationwide Carriers Order*[6] and October 10, 2003 *Order To Stay*,[7] ACSW filed its 2003 Petition in which it proposed a revised compliance plan.[8] Most recently, ACSW filed an Update to its 2003 Petition with information on its progress toward compliance with the FCC's E911 rules.[9]

As described below, ACSW has made substantial progress in building its CDMA network and continues to work diligently toward full deployment following a construction plan that includes specific completion deadlines. ACSW seeks additional time for its A-GPS handset deployment, however, given the unique challenges of the final stages of its CDMA construction program.

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[5] *See* ACS Wireless Petition for Limited Waiver, CC Docket 94-102 (Nov. 31, 2001) (Original Petition); *see also* at 47 C.F.R. § 20.18(e)-(h) (Phase II rules). Shortly thereafter, on December 5, 2001, ACSW filed a redacted version of its Original Petition for public inspection.

[6] *See Order To Stay, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide Carriers*, CC Docket No. 94-102, 17 FCC Rcd 14,841 (2002) (*Non-Nationwide Carriers Order*).

[7] *See Order To Stay, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, E911 Compliance Deadlines for Non-Nationwide Tier III CMRS Carriers*, CC Docket No. 94-102, 18 FCC Rcd. 20,987 (rel. Oct. 10, 2003) (*2003 Order To Stay*).

[8] *See* 2003 Petition.

[9] *See* Update.

## 2. ACSW Continues to Face Unique Challenges in the Isolated Communities it Serves.

In the three years that have passed since ACSW filed its Original Petition, ACSW has worked diligently to build a CDMA network that will support A-GPS handsets.[10] Despite its best efforts, ACSW has not been able to meet its original schedule due to the enormity of the resources needed to construct its CDMA network. Because of the particularly unique challenges that ACSW faces in the last phase of its CDMA build-out, and the cost of deploying CDMA sites in rural and remote areas to a very small population base, ACSW had to push back its schedule for completing 29 of its original 150 Phase III sites. Based on current forecasts, ACSW plans to spend an additional $27 million to finish construction of its entire CDMA system in 2005 and 2006, a substantial portion of ACS' capital budget for these years.[11]

ACSW has described the challenges that it faces by virtue of being a small carrier attempting to build an expansive network throughout rural Alaska.[12] Phase IV, which will cover two geographic areas, presents some of the most extreme challenges. ACSW will construct sites in a number of smaller communities in Southeast Alaska.[13] Also, in Southcentral Alaska, it will build sites from Palmer, which is approximately 50 miles from Anchorage, east, along the Glen Highway to Glenallen and from there, south along the Richardson Highway to Valdez.[14]

In Southeast Alaska, most of the communities served are very small and are located on small mountainous islands in the Alexander Archipelago. They include Sitka (pop. 8835), Wrangell (pop. 2308), Petersburg (pop. 3224), Manley (pop. 72), Klawock (pop. 854), Thorne Bay (pop. 557), Hoonah (pop. 860), and Craig (pop. 1397). Similarly, in Southcentral, the sites

[10] *See generally* 2003 Petition; Update.
[11] ACS has obligations to support its wireline services as well as its wireless services.
[12] *See generally* 2003 Petition; Update.
[13] See Attachment A
[14] See Attachment B

will serve small communities dotting the *sole* highways in the area from Palmer to Glenallen (pop. 554), and on to the Trans-Alaska Pipeline System terminus, Valdez (pop. 4036).

Construction of these sites poses extreme challenges. The sites in Southeast, located mostly on small, mountainous islands, are the hardest to construct in ACSW's entire network. A number of the Southeast locations have short roads serving the communities. However, the roads, if paved, are only two lanes wide, and often steep and winding. They cannot accommodate large trucks necessary to haul ACSW's substantial metal equipment.

Consequently, at Thorne Bay, Manley, and Craig, ACSW must barge the equipment to the community, assemble and construct at the dock, and then transport the completed communications site by helicopter to the designated location. Construction crews must take commercial flights to Ketchikan and fly by small plane to the site. For other locations, including Ratz Mountain, Petersburg, Mount Ripinski, Point Howard, Hoonah, High Mountain, and Cape Spencer, not only will ACSW have to build equipment at the dock and transport the completed sites by helicopter, but it will also have to transport construction crews by helicopter. Moreover, construction crews often have to contend with rain and fog, typical of Southeast Alaska's climate. Weather delays are not uncommon, as crews are stranded in the Ketchikan airport or at a completed communications site, sometimes up to two weeks, with pay, until the helicopter or small plane can fly. All these conditions significantly add to the cost of construction and logistical challenges.

For the Southcentral sites in Phase IV, ACSW will need to transport equipment along approximately 300 miles of highway from Anchorage.[15] The transportation cost will add significantly to the overall construction cost. ACSW estimates that construction of Phase IV

[15] In Alaska, much of what is considered a "highway" consists of only one lane in each direction.

sites will cost between $85,000 - $350,000 per installation, depending on transportation costs and other factors.

**3. <u>ACSW is Taking Major Steps to Achieve Compliance.</u>**

ACSW continues to dedicate substantial amounts of money and resources to building its CDMA network and has taken significant steps to achieve compliance. ACSW has accomplished the following:

- ACSW has made substantial progress on construction of the 32 sites in Anchorage and the 9 sites in the Matanuska Valley that comprise Phase I. Overall, ACSW has completed construction on the core coverage CDMA sites for this area, and will continue to add capacity as appropriate, over time, that will improve service quality;[16] and

- ACSW has completed construction of 19 CDMA sites in Kenai, 10 CDMA sites in Juneau, and 14 CDMA sites in Fairbanks[17] that comprise Phase II. As of December 31, 2004, ACSW had constructed cell sites and upgrades to reach substantially all of the population in these urban areas. ACSW will continue to add more sites as appropriate, over time, which will allow greater capacity and improve service quality.

In addition to the network build-out progress noted in ACSW's 2003 Petition,[18] ACSW has:

- Budgeted $65 million total cost through year-end 2006 for deployment of its CDMA network, including switching, software, training, site leases, tower construction, permitting, and other components;

- Negotiated a four-year, $21 million contract with Nortel for switching, software and hardware, and software training components of ACSW's CDMA network;

[16] Construction has commenced on almost all sites, and the sites are either all or partially constructed at this time. ACSW has not been able to begin work on three of the 41 Phase I sites planned. ACSW's permit for Jewel Lake was revoked due to complaints by neighbors about the height of the tower, and ACSW may reapply for that permit or find alternative mechanisms for serving that area. The City of Anchorage has not yet signed a lease for land on the Russian Jack site. ACSW expects to reach agreement, however, because the City of Anchorage has great interest in completing the project. Finally, collocation of equipment on a tower owned by Dobson Communications at Elmendorf Air Force Base is on hold, pending joint spectrum clearing by the military, a process that takes about 120 days.

[17] ACSW has not yet been able to construct/upgrade two planned sites in Fairbanks. ACSW had planned to collocate CDMA equipment on a tower at College Road, but could not because of structural issues. ACSW has selected another tower and is performing a technical analysis now. Also, ACSW was not able to obtain a permit for the Chena Hot Springs site until December 9, 2004 because the City of Fairbanks administration was necessarily focused on issues related to extensive wildfires over the summer and did not process the permit earlier. ACSW expects to complete work on this site within 120 days.

[18] *See id*. at 10-11.

- Migrated all subscribers to its new Home Location Register (HLR) which supports CDMA technology;

- Conducted all necessary training of technical staff for migration to and operation of ACSW's new CDMA network; and

- Tested and implemented an SMS system, completed in January 2004. Tested, implemented, and converted to a new billing system as well as back office functionalities to handle transfer to CDMA network, completed in June 2004.

With its progress in deploying its CDMA network in the major population centers, ACSW reports for the fourth quarter of 2004 that approximately 80% of all new handsets activated for Anchorage-area subscribers were location-capable. Statewide, approximately 75% of all new handsets activated were location-capable in the fourth quarter of 2004.

ACSW has developed a plan for Phases III and IV that covers construction and upgrades for CDMA sites in the more rural and remote communities in its service area, as follows:

- **Updated Phase III**: ACSW expects to complete 121 of the originally-scheduled 150 Phase III sites by December 31, 2005. It will push construction of 29 of the planned sites out into 2006 as Phase IV.

- **Updated Phase IV**: ACSW plans to construct 29 sites by December 31, 2006 in Southeast and Southcentral Alaska. Approximately 18 sites will stretch from Glenallen, south along the Richardson Highway, to Valdez, in Southcentral Alaska. ACSW currently serves Valdez and Glenallen through roaming partners. Its CDMA build-out will allow it to transition service fully to its own facilities in these areas.

When ACSW completes these sites, its CDMA network will extend approximately 1240 miles from Ketchikan, in Southeast Alaska, to Deadhorse, on the Arctic Ocean.

## III. REVISED REQUEST.

### 1. <u>Waiver Request on Handset Deployment Schedule.</u>

Based on its updated construction program, ACSW needs to revise the deadlines it requested for deploying location-capable handsets. Its revised request is as follows:

- Ensure that at least 90% of all new handsets activated in Anchorage and Fairbanks are location-capable no later than May 30, 2005;

- Ensure that at least 90% of all new digital handsets activated statewide are location-capable no later than December 31, 2005;[19]
- Ensure that penetration of location-capable handsets among its subscribers statewide reaches 95% no later than December 31, 2007.

ACSW's request is narrowly tailored and will not harm the public interest.

### A. *ACSW's Request is Narrowly Tailored.*

ACSW's request is targeted to the FCC's final two benchmarks that require ACSW to ensure that *all* new digital handsets activated are location-capable by November 30, 2005, and that 95% of its subscribers migrate to location-capable handsets by December 31, 2005. These benchmarks are most challenging for ACSW to meet because they require ACSW to achieve compliance broadly throughout its customer base. Since ACSW has operated with a TDMA and analog system, the majority of its pre-existing subscriber base had TDMA handsets. The FCC's goals can only be achieved when most of its subscribers buy new handsets and switch to the CDMA system. Many subscribers simply prefer to keep their existing, older handsets, even though ACSW runs promotional campaigns to encourage customers to buy new, location-capable handsets.[20] It will take ACSW longer to reach its customers across this vast, largely rural state with its conversion program since CDMA construction has taken longer than originally planned.

Since ACSW has had to push back its construction schedule, it will need more time to achieve the FCC's goals. In particular, in Phase IV, ACSW's construction is costly and difficult because it plans to upgrade sites that are in very remote locations, including sites that are

[19] ACSW has made great efforts to extend its network to even the most remote areas of Alaska. Although ACSW believes that wireless coverage in these areas is an important public safety consideration, it is not economically feasible to deploy CDMA technology in all of them. Accordingly, some coverage areas may remain TDMA-based, and some may even be analog. Thus, a small number of handsets may operate primarily on analog or TDMA systems, and it may be extremely difficult to reach a 100% standard in the near future. For example, ACSW provides analog service to Barrow, Alaska, a relatively small and remote native community, located on the Arctic Ocean, at least 100 miles from any other community. It is not economically feasible to provide digital service to this extremely remote site without technological innovations.

[20] ACSW is currently running four promotions: the "3587 Promo," the "November Special" (extended), the "Kyocera PFD Special," and the "Audiovox Promo."

inaccessible by road or on mountaintops. ACSW is limited to a very short construction season across most areas of the state. These conditions make completion logistically impractical by the end of this year. ACSW simply cannot marshal the resources necessary to complete its ambitious construction program by the end of this year.

**B. *ACSW's Request is in the Public Interest.***

ACSW's revised request is in the public interest and will not harm public safety. ACSW will still be ready to provide location data when urban and rural Alaska emergency personnel become capable of receiving this information. Therefore, even if the FCC grants extensions to the handset deployment schedule, ACSW will still be ready to provide E911 service when emergency personnel can use it, within six months of a request.

In its Update, ACSW reported that that the Municipality of Anchorage's (MOA) PSAP was the only emergency response site that had requested E911 service.[21] ACSW is fully prepared to provide Phase II location data in the Anchorage area and anticipates providing Phase I and II service for its Anchorage area CDMA subscribers beginning February 2005.[22] The Fairbanks Northstar Borough has indicated its intent to install equipment for receiving location data. ACSW is ready to provide E911 service to its CDMA subscribers in Fairbanks now, as well as in other urban areas where it has completed its Phase I and II build-out.

Despite ACSW's preparedness, ACSW is not aware of any other PSAP in Alaska that has the equipment and/or software necessary to receive E911 Phase II location data.[23] In Alaska, there are no local "PSAPs" for many of the smaller communities. According to the 911 Fact Book for the State of Alaska, issued March 23, 2004, a 2001 survey showed that 164

[21] *See* Update at 4.
[22] The MOA PSAP has said that it will be ready to receive location data at this time.
[23] ACSW understands that the Kenai PSAP has some equipment capable of receiving E911 Phase II data, but still lacks the interface necessary to receive location data from carriers.

communities in Alaska had no 911 service.[24] The Fact Book reports that when a subscriber dials 911, it rings in a variety of places, from the local power plant to the nearest State Trooper's office, which can be hundreds of miles away.[25]

The Alaska State Troopers provide emergency response for the smaller communities in Southeast and the communities along the Glen and Richardson Highways in Southcentral that are included in ACSW's Phase IV CDMA upgrade. Indeed, in many remote Alaskan communities, emergency calls are simply routed to the State Trooper dispatch, or to a police officer's cell or radio telephone.[26] The Alaska State Troopers do not have the equipment and/or software necessary to receive location data and are only now beginning to investigate the financial and technical feasibility of acquiring and using additional equipment.

Also, the State has moved slowly in enacting legislation to authorize statewide 911 coordination and upgrades. Only last year, the State of Alaska passed legislation establishing a Division of Homeland Security and Emergency Management in the Department of Military and Veteran's Affairs.[27] The legislation established the position of Statewide 911 Coordinator within this Department to coordinate and facilitate the implementation of 911 systems throughout the State.[28] The State has not named a Coordinator yet, and the position does not even open until March 1, 2005.[29] Once installed, the Coordinator will participate in efforts to set uniform statewide standards for automatic number identification and automatic location identification

[24] 9-1-1 Fact Book for the State of Alaska, March 23, 2004, Municipality of Anchorage/Anchorage Police Department, 911 System Implementation (Fact Book) at 8.
[25] *See id.*
[26] For example, for Hoonah, 911 calls are routed to the State Trooper's radio phone. For Thorne Bay, Klawock, and Craig, located on Prince of Wales Island in the Alexander Archipelago, Thorne Bay's 911 calls are answered by the Alaska State Trooper dispatch in Ketchikan, located on a different island, 50 miles to the east. Klawock receives 911 support from the Craig Police Department Dispatch, which currently supports only three 911 lines and is not currently capable of receiving Phase II data. None of these emergency personnel are capable of receiving E911 location data and will likely not be capable for some years.
[27] *See* S.B. 385, 23rd Ak. Legis. (enrolled Sept. 7, 2004).
[28] *See* A.S. § 26.23.170(b).
[29] *See id.*

data transmission and will make recommendations necessary for implementing basic and Enhanced 911 services.[30] At this point, however, the State has not yet even begun to make formal plans for implementing a coordinated basic 911 and E911 system under the new law. Considering the expense of upgrading public safety answering equipment,[31] it seems highly unlikely that any of the smaller rural communities will be able to obtain equipment and software that can use location data anytime soon.

Therefore, ACSW's full compliance with all regulatory deadlines would still not guarantee the availability of E911 services. While ACSW is building out its CDMA network to provide consumers with advanced technology, there is no guarantee that, upon completion of this substantial undertaking, the A-GPS functionality will be used in all locations. However, as ACSW builds out to more rural areas in the state, more and more remote areas will have the opportunity for E911 Phase II service when and if their local emergency personnel ever acquire equipment and software.

**2. Forbearance Request on Accuracy Standard.**

In its 2003 Petition, ACSW asked the FCC to forbear from enforcing its accuracy and reliability standards until December 31, 2005.[32] ACSW intended to use the period of time, beginning when a PSAP requested E911 Phase II location data, to conduct testing and gather data based on the actual use of A-GPS handsets on its network to determine what levels of accuracy and reliability were actually achievable on its network.

ACSW has contracted with Intrado, a 25-year expert in management and implementation of emergency communications systems, to ensure that it meets the FCC's accuracy standards.

[30] *See id*. at (b)(1) and (2).
[31] The MOA's preliminary 2004-2005 budget projections for its upgraded E911-capable PSAP was $1,169,957 for infrastructure costs alone. *See* Fact Book at 4.
[32] *See* 2003 Petition at 19.

However, since ACSW has not begun to provide Phase II location data to any PSAP, it has not yet been able to test the A-GPS technology so that it can verify the level of accuracy achievable on its network.

Intrado will begin testing and gathering data for ACSW on accuracy and reliability levels as soon as ACSW begins providing Phase II location data to the Anchorage PSAP.[33] However, even with this data, ACSW cannot determine true accuracy and reliability in Alaska until data is available for rural areas. Therefore, although the Anchorage data will be helpful, ACSW must obtain data from rural areas as well to assess location accuracy in different areas in the state.

To ACSW's knowledge, no PSAPs in rural areas have even issued a request for proposal or made any other formal request to obtain the equipment and/or software necessary to receive Phase II data. Further, in ACSW's experience, it can easily take at least one year to order and install necessary equipment. Therefore, ACSW projects that by December 31, 2008 it will have had sufficient opportunity to test accuracy in rural and urban locations so that it can report to the FCC on its ability to achieve its accuracy standards throughout its service areas.[34] During this period, in cooperation with the PSAPs, it will test the accuracy of A-GPS handsets on its network, collect data on the effectiveness of A-GPS in different locations, and determine what accuracy and reliability level is practically achievable throughout Alaska locations.

ACSW's intent is not to avoid its public safety obligations. On the contrary, ACSW only seeks to ensure that the applicable rules account for the special circumstances it faces as a rural Tier III carrier in Alaska. Larger carriers can easily exceed the 67% and 95% accuracy

[33] ACSW was prepared to test accuracy by November 20, 2004, but could not because no PSAP in its service area was capable of receiving Phase II location data.

[34] ACSW assumes that if the Statewide 911 Coordinator takes office in March 2005, the earliest the State may be able to develop funding and begin the process of procuring equipment and software is during 2006. Based on this estimate, ACSW may be able to test the accuracy of location data more broadly in rural areas in 2007, but, more likely, it will be 2008 before there is substantial capability to receive the signals. These estimates reflect ACSW's best judgment at this time.

benchmarks in the more densely populated areas that they serve, while achieving lower accuracy in the rural areas. Since ACSW serves far more limited urban areas than larger carriers, it will not be able to take as great an advantage of higher accuracy levels in urban areas in its blended average. Also, it is unclear what accuracy levels ACSW's A-GPS technology will achieve under Alaskan conditions. ACSW seeks to ensure that the accuracy standards applicable to it are based upon the realities of providing services in Alaska. Therefore, ACSW asks that the Commission forbear from enforcing the Section 20.18(h) standards until December 31, 2008.

Thus, if forbearance is granted, ACSW will still deploy Phase II solutions and equipment; ACSW will still provide Phase II information to PSAPs when requested; and ACSW will continue to strive for the highest level of accuracy and reliability possible, even in the most rural of its network environments. ACSW simply will not be held to an accuracy standard that has not been shown to be realistic, workable, or necessary for rural networks for a period of time while it deploys and tests A-GPS in real situations on its networks.

## IV. SPECIFIC RELIEF SOUGHT.

For the foregoing reasons, ACSW seeks a longer limited waiver of the E911 Phase II compliance requirements set forth at 47 C.F.R. § 20.18(g), and asks the Commission to forbear from enforcing its accuracy and reliability standards set forth at 47 C.F.R. § 20.18(h), until December 31, 2008. ACSW proposes the following revised compliance plan for location-capable handset deployment:

- Ensure that at least 90% of all new handsets activated in Anchorage and Fairbanks are location-capable no later than May 30, 2005;
- Ensure that at least 90% of all new digital handsets activated statewide are location-capable no later than December 31, 2005; and
- Ensure that penetration of location-capable handsets among its subscribers statewide reaches 95% no later than December 31, 2007.

The requested waiver is necessary in light of the unique technical and economic hurdles faced by ACSW in serving rural Alaska and in consideration of the fact that only the Anchorage PSAP has made a request for E911 service. Also, by granting limited forbearance, the Commission will ensure that its regulations are applied fairly and appropriately tailored to address the special considerations of ACSW's vast Alaska network.

Respectfully submitted on this 26th day of January, 2005.

**ACS Wireless, Inc**.


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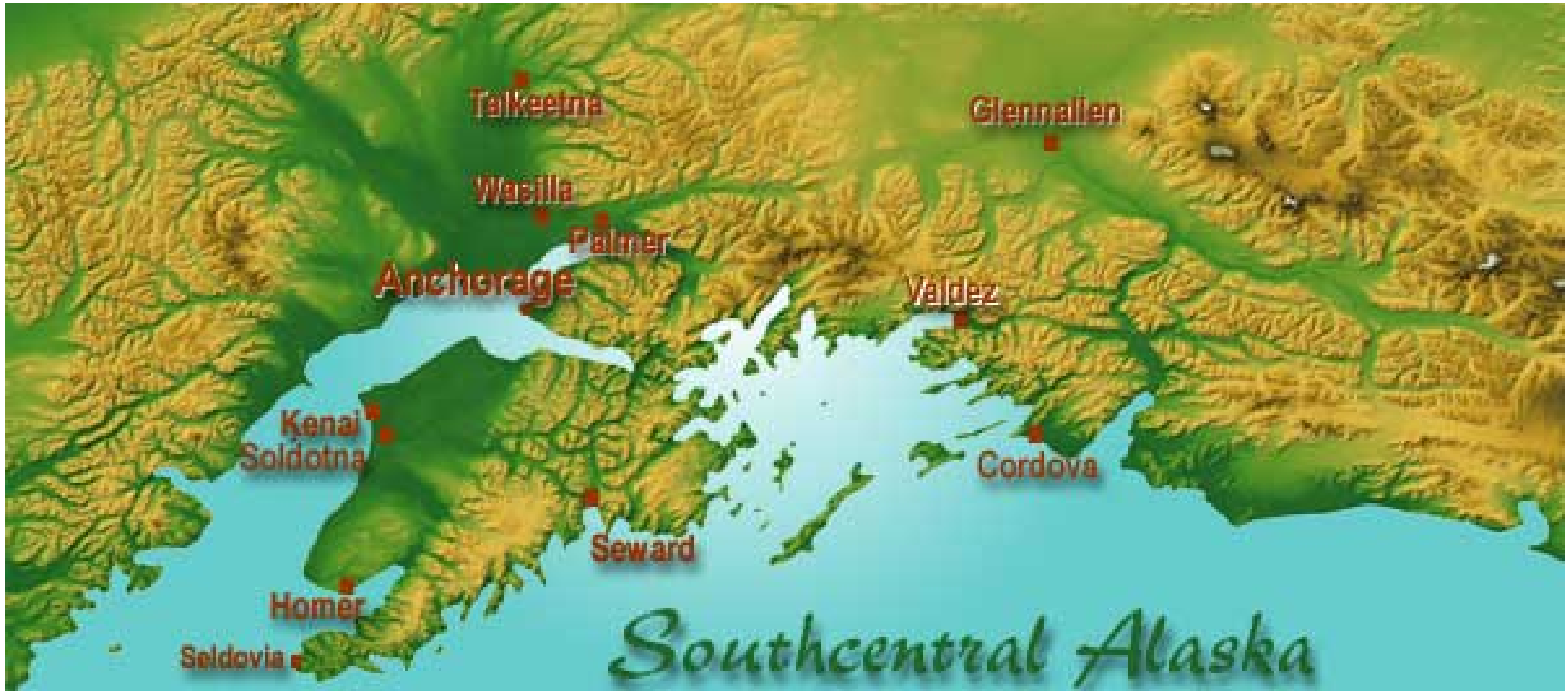
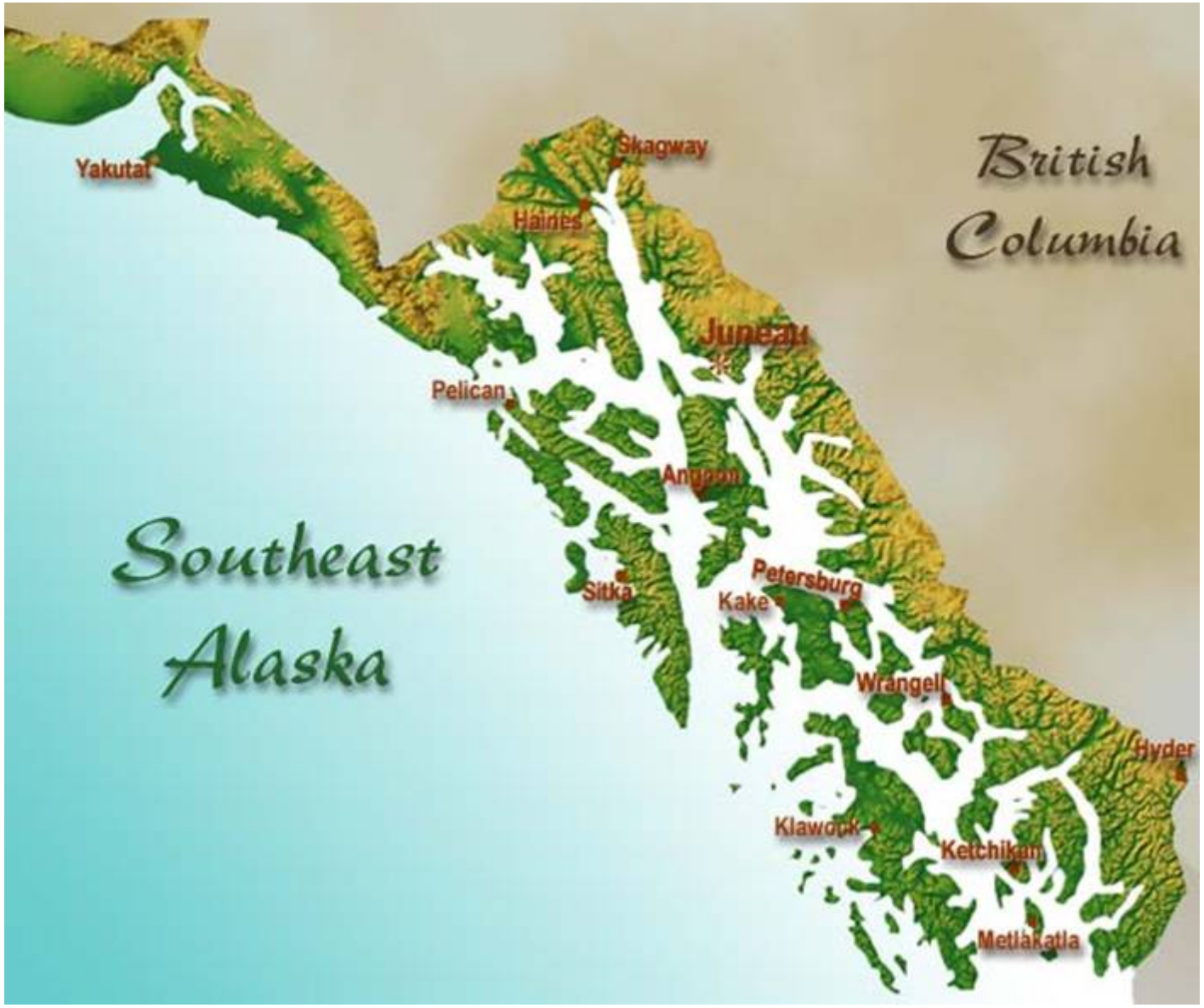



**Attachment A**




**Attachment B**

**ATTACHMENT C**

**Declaration of Ken Sprain**

I, Ken Sprain, hereby state, under the penalty of perjury, as follows:

1. I am the Senior Vice President Network & IT for ACS Holdings, the parent company of ACS Wireless, Inc. (ACSW). The scope of my work includes managing wireless engineering, installation and operations functions.

2. I have reviewed ACSW's Supplement to its Petition for Limited Waiver and Forbearance (Supplement). All facts set forth in the Supplement are true and correct to the best of my knowledge.

Executed this 26th day of January, 2005.

Ken Sprain
Senior Vice President Network & IT